

JUDGE COFFEE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

08 CV

6965

ECF Case
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Kuldeep SINGH (A078 417 322) :

Plaintiff, :

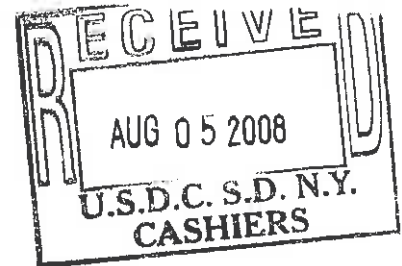
Case No

-against- :

MICHAEL B. MUKASEY, Attorney General of the:
United States of America, MICHAEL CHERTOFF, :
Secretary of the U.S. Department of Homeland :
Security, ROBERT S. MUELLER, III, Director, :
Federal Bureau of Investigations, DR. EMILIO T. :
GONZALEZ, Director, U.S. Citizenship and :
Immigration Services, ANDREA QUARANTILLO :
District Director, Bureau of Citizenship and :
Immigration Services, New York District Office, :

Defendants. :

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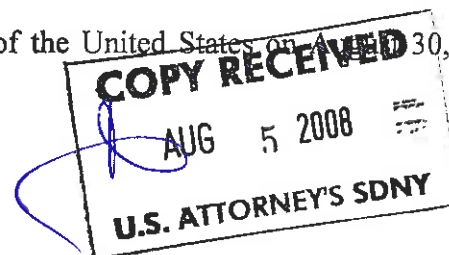
PLAINTIFF'S ORIGINAL COMPLAINT
FOR WRIT IN THE NATURE OF MANDAMUS

COME NOW, Kuldeep SINGH, Plaintiff in the above-styled and numbered cause, and for cause of action would show unto the Court the following:

1. This action is brought against the Defendants to compel a decision on an application for naturalization that has been pending for a period of almost two and a half years. The application was filed and remains within the jurisdiction of the Defendants, who have improperly withheld action on said application to Plaintiff's detriment.

PARTIES

2. Plaintiff Kuldeep SINGH is a native and citizen of India and was born on March 30, 1966. He became a lawful permanent resident of the United States on April 30,



2001 (A #078-417-322). Said residency has never been surrendered or revoked and the Plaintiff is not now in deportation, exclusion or removal proceedings.

3. Defendant, MICHAEL B. MUKASEY, is the Attorney General of the United States of America, and this action is brought against him in his official capacity. He is generally charged with enforcement of the Immigration and Nationality Act, and is further authorized to delegate such powers and authority to subordinate employees of the Department. More specifically, the Attorney General is granted "sole authority to naturalize persons as citizens of the United States." 8 U.S.C. §1421.

4. Defendant, MICHAEL CHERTOFF, is Secretary of the Department of Homeland Security of the United States, and this action is brought against him in his official capacity. He is generally charged with enforcement of the Immigration and Nationality Act, and is further authorized to delegate such powers and authority to subordinate employees of the Department. More specifically, the Secretary is responsible for the adjudication of applications for naturalization filed pursuant to the Immigration and Nationality Act (INA), 8 U.S.C. § 1423. The United States Citizenship and Immigration Services (USCIS) is an agency within the Department of Homeland Security to whom the Secretary's authority has in part been delegated, and is subject to the Secretary's supervision.

5. Defendant, ROBERT S. MUELLER, III, is the Director of the Federal Bureau of Investigations, and this action is brought against him in his official capacity. The Federal Bureau of Investigations (FBI) is the investigative arm of the U.S. Department of Justice, authorized under Title 28, Section 533 of the U.S. Code to conduct investigations against terrorists and foreign intelligence threats and to uphold and enforce the criminal laws of the United States. In furtherance of that mission, the FBI is currently authorized to conduct security

background investigations concerning aliens applying for various benefits under the Immigration and Nationality Act.

6. Defendant, DR. EMILIO T. GONZALEZ, is the Director of the United States Citizenship and Immigration Services, in charge with ultimate authority over all operations of the USCIS, said including, but not limited to, the adjudication of parties for naturalization.

7. Defendant, ANDREA QUARANTILLO, is the District Director of the New York office of the USCIS generally charged with supervisory authority over all operations of the INS within her District with certain specific exceptions not relevant here. 8 CFR §103.1(g)(2)(ii)(B). As will be shown, Defendant District Director is the official with whom Plaintiff's application for naturalization was properly filed.

JURISDICTION

8. Jurisdiction in this case is proper under 28 U.S.C §§ 1331 and 1361, 5 U.S.C §701 *et seq.*, and 28 U.S.C §2201 *et seq.* Relief is requested pursuant to said statutes.

VENUE

9. Venue is proper in this court, pursuant to 28 U.S.C §1391(e), in that this is an action against officers and agencies of the United States in their official capacities, brought in the District where Plaintiff resides and where a substantial part of the events or omissions giving rise to Plaintiff's claim occurred.

EXHAUSTION OF REMEDIES

10. Plaintiff has exhausted his administrative remedies. Plaintiff has made several inquiries into his case. All inquiries have been to no avail. Accordingly, Plaintiff has been forced to retain the services of an attorney to pursue the instant action.

CAUSE OF ACTION

11. That Plaintiff caused to have filed on his behalf, a petition for Naturalization (Form N-400) with the USCIS, based upon his continued residence in the United States for a period in excess of five years. A District Adjudication Officer of the USCIS conducted an interview on April 06, 2006. Plaintiff was told at the conclusion of the interview that he had passed the English and U.S. history and government portions of the exam, but that a decision could not be made on his application.

12. That Plaintiff has never been arrested for any criminal offenses at any time anywhere in the world.

13. If the USCIS fails to make a decision on a naturalization application within 120 days after the interview, the applicant may appeal to the U.S. District Court for relief. 8 U.S.C. §1447.

14. Defendants' refusal to act in this case is, as a matter of law, arbitrary and not in accordance with the law. Defendants willfully, and unreasonably, have delayed in and have refused to, adjudicate Plaintiff's application for over two years thereby depriving him of the right to a decision on his status and the peace of mind to which Plaintiff is entitled.

15. A Writ of Mandamus will lie where the Plaintiff can satisfy a three tier test: (1) that the claim is clear and certain; (2) that the Defendants' official duty to act is ministerial and "so plainly prescribed as to be free of doubt" and (3) no other remedy is available at law. See *Barron v. Reich*, 3 F.3d 1370, 1374 (9th Cir. 1994). Although the Secretary of the Department of Homeland Security and his agent the District Director of the New York office of the Bureau of Citizenship and Naturalization Services are vested with certain discretionary powers concerning the ultimate decision in an application for naturalization, the adjudication of

the petition is a ministerial act in which the Secretary is without discretion. Thus, the failure to act upon said petition will give rise to a Writ of Mandamus. 28 U.S.C. § 1361.

16. Plaintiff has been greatly damaged by the failure of Defendants to act in accord with their duties under the law. He has been deprived of the benefits and liberties associated with American citizenship, including, but not limited to the right to vote in elections.

17. The Defendants, in violation of the Administrative Procedures Act, 5 USC §701 *et seq.*, are unlawfully withholding or unreasonably delaying action on Plaintiff's application and have failed to carry out the adjudicative functions delegated to them by law with regard to Plaintiff's case.

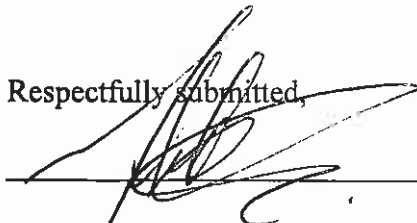
18. Plaintiff has made numerous status inquiries in an attempt to secure adjudication of his applications, all to no avail. Accordingly, Plaintiff has been forced to retain the services of an attorney to pursue the instant action.

PRAYER

WHEREFORE, in view of the arguments and authority noted herein, Plaintiff respectfully prays that the Defendants be cited to appear herein and that, upon due consideration, the Court enter an order:

- a. Requiring Defendants to adjudicate Plaintiff's applications for naturalization;
- b. Granting such other relief at law and in equity as justice may require.

Respectfully submitted,



MITCHELL C. ZWAIK
Attorney for Petitioners
3900 Veterans Memorial Highway Suite 120
Bohemia, New York 11716
(631) 588-4040

Documents Submitted

Exhibit A	Copy of Resident Alien Card
Exhibit B	Copy of Naturalization Interview Results dated April 6, 2006
Exhibit C	Copy of USCIS Reply to the Request of Kuldeep Singh concerning Case Status, dated December 28, 2006
Exhibit D	Copy of USCIS Reply to the Request of Kuldeep Singh concerning Case Status, dated February 22, 2007
Exhibit E	Copy of Congressional Unit request for information dated 5/18/2007
Exhibit F	Copy of USCIS response to the inquiry from Congressional Unit dated December 04, 2007

Department of Homeland Security
U.S. Citizenship and Immigration Services

N-652, Naturalization Interview Results

A#: 78 417322

On 4-6-6, you were interviewed by USCIS officer C. GONZALEZ

- ☒ You passed the tests of English and U.S. history and government.
- ☐ You passed the tests of U.S. history and government and the English language requirement was waived.
- ☐ USCIS has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/or a knowledge of U.S. history and government.
- ☐ You will be given another opportunity to be tested on your ability to _____ speak/ _____ read/ _____ write English.
- ☐ You will be given another opportunity to be tested on your knowledge of U.S. history and government.
- ☐ Please follow the instructions on Form N-14.
- ☒ USCIS will send you a written decision about your application.
- ☐ You did not pass the second and final test of your _____ English ability/ _____ knowledge of U.S. history and government. You will not be rescheduled for another interview for this Form N-400. USCIS will send you a written decision about your application.
- A) _____ Congratulations! Your application has been recommended for approval. At this time, it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report for the Oath Ceremony.
- B) ☒ A decision cannot yet be made about your application.

It is very important that you:

- ☒ Notify USCIS if you change your address.
- ☒ Come to any scheduled interview.
- ☒ Submit all requested documents.
- ☒ Send any questions about this application in writing to the officer named above. Include your full name, Alien Registration Number (A#), and a copy of this paper.
- ☒ Go to any Oath Ceremony that you are scheduled to attend.
- ☒ Notify USCIS as soon as possible in writing if you cannot come to any scheduled interview or Oath Ceremony. Include a copy of this paper and a copy of the scheduling notice.

NOTE: Please be advised that under section 336 of the Immigration and Nationality Act, you have the right to request a hearing before an immigration officer if your application is denied, or before the U.S. district court if USCIS has not made a determination on your application within 120 days of the date of your examination.

Form N-652 (Rev. 01/14/05)N

LETTER FOR OATH _____



Citizenship and Immigration Services

26 Federal Plaza
New York, NY 10278

A78417322

Hand Deliver

Date: December 28, 2006

Kuldeep Singh

Dear Applicant:

We are in receipt of your inquiry dated December 28, 2006 regarding the status of your application for Naturalization.

Please be advised that your application is pending receipt of security checks. Upon receipt of all security checks a decision will be made on your N-400 application.

We hope that the information provided was helpful. Thank you for your patience and cooperation in this matter.

Sincerely,

Lillian Newkirk
Immigration Information Officer
Citizenship Unit
New York District

U.S. Department of Homeland Security
Jacob Javits Federal Building
26 Federal Plaza
New York, NY 10278



**U.S. Citizenship
and Immigration
Services**

Thursday, February 22, 2007

KULDEEP SINGH
2126 MULINER AVE #1-I
BRONX NY 10462

Dear kuldeep singh:

On 01/23/2007 you, or the designated representative shown below, contacted us about your case. Some of the key information given to us at that time was the following:

Caller indicated they are:	The applicant
Attorney Name:	Information not available
Case type:	N400
Filing date:	Information not available
Receipt #:	ESC-00-154-3607
Beneficiary (if you filed for someone else):	singh, kuldeep
Your USCIS Account Number (A-number):	A078417322
Type of service requested:	Case Status - Outside Processing Time

The status of this service request is:

The processing of your case has been delayed. A check of our records establishes that your case is not yet ready for decision, as the required investigation into your background remains open.

Until the background investigation is completed, we cannot move forward on your case. These background checks are required to be completed on all applicants who apply for the immigration benefit you are seeking. We will make every effort to make a decision on this case as soon as the background checks are complete. If you do not receive a decision or other notice of action from us within 6 months of this letter, please contact us by calling our customer service number provided below.

If you have any further questions, please call the National Customer Service Center at 1-800-375-5283.

Please remember: By law, every person who is not a U.S. citizen and who is over the age of 14 must also notify the Department of Homeland Security within 10 days from when they move (persons in "A" or "G" nonimmigrant status are exempt from this requirement). If you have moved, please complete a Form AR-11 and mail it to the address shown on that form. If you do not have this form, you can download it from our website or you can call the National Customer Service Center at 1-800-375-5283 and we can order one for you. If you move, please call us with your new address information as soon as your move is complete. If you have already called us and given us this information, you do not need to call again.

U.S. Citizenship and Immigration Services

Congressional Unit



GIVE THIS YOUR IMMEDIATE ATTENTION !

File No: 78417322
Date : 5/18/2007
Ctrl : 07-6163

In Re: **SINGH, KULDEEP**

Information requested by : **CROWLEY, JOSEPH**

2800 BRUCKNER BOULEVARD SUITE #301 BRONX, NY 10465

☐ Attorney ☐ Congressional ☐ Consulate ☐ Other

Inquiry: ☐ Telephone ☐ By Letter ☐ Appeared in person

To: **CON**

Information requested: **FOR REVIEW AND RESPONSE. DUE BY 6/17/2007**

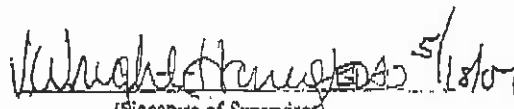
STATUS OF N-400.

Information furnished:

PLEASE BE ADVISED THAT ACCORDING TO USCIS RECORDS, APPLICANT'S CASE IS CURRENTLY PENDING SECURITY AGENCY CHECKS. UPON RECEIPT OF A RESPONSE, THE CASE WILL BE ADJUDICATED ACCORDINGLY.


(Signature of Officer of Employee)

Approved by:


(Signature of Supervisor)

Location:

Mahony, Fran

From: NYCONG [nycong@dhs.gov]
Sent: Tuesday, December 04, 2007 3:46 PM
To: Mahony, Fran
Subject: RE: 784-173-22

USCIS is pending completion of all background security checks prior to making a final decision on the application. Unfortunately, no time frame can be offered as to when completion of the background checks will take place. However, please be advised that once a final decision is made on the application, the applicant will receive a written notification.

From: Mahony, Fran [mailto:Fran.Mahony@mail.house.gov]
Sent: Tuesday, December 04, 2007 3:20 PM
To: NYCONG
Subject: 784-173-22

Kuldeep Singh still waiting for oath ceremony. Interviewed 4/2006 Control # 07-6163

Fran Mahony Reilly
Director of Community Outreach
Congressman Joseph Crowley
2800 Bruckner Boulevard, Suite 301
Bronx, New York 10465
(718) 931-1400

12/4/2007

**UNITED STATES DEPARTMENT OF JUSTICE
SOUTHERN DISTRICT OF NEW YORK**

KULDEEP SINGH,

Plaintiff,

-against-

**MICHAEL B. MUKASEY, Attorney General of the United States of America,
MICHAEL CHERTOFF, Secretary of the U.S. Dept. of Homeland Security,
ROBERT S. MUELLER, III, Director, Federal Bureau of Investigations,
DR. EMILIO T. GONZALEZ, Director, U.S. Citizenship and Immigration
Services, and ANDREA QUARANTILLO, District Director, U.S. Citizenship &
Immigration Services, New York District Office,**

Defendants.

WRIT OF MANDAMUS

MITCHELL C. ZWAIK
Attorney for Plaintiff
Office and Post Office Address
3900 Veterans Memorial Highway, Suite 120
Bohemia, NY 11716
(631) 588-4040
